

ASSEMBLY BILL

No. 595

Introduced by Assembly Member Adams

February 25, 2009

An act to amend Section 1522 of the Health and Safety Code, and to amend Section 361.4 of the Welfare and Institutions Code, relating to children, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 595, as introduced, Adams. Placement of children: criminal background checks.

(1) Existing law, the California Community Care Facilities Act, provides for the licensure and regulation of community care facilities, including foster family homes and foster family agencies, by the State Department of Social Services. Violation of these provisions is a misdemeanor.

Existing law requires a criminal record check of applicants for a license, special permit, or certificate of approval for a foster family home or certified family home, and other persons, including nonclients who reside in those homes and staff and employees. Existing law requires that an application be denied, unless the Director of Social Services grants an exemption, if it is found that the applicant or any of the other designated persons has been convicted of prescribed crimes.

This bill would prohibit the State Department of Social Services or other approving authority from issuing a license or certificate of approval to any foster family home or certified family home applicant who has not obtained both a California and Federal Bureau of Investigation criminal record clearance or an exemption from disqualification, as prescribed.

This bill would, to the same extent required for federal funding, effective October 1, 2008, prohibit the director from granting an exemption where a foster care provider applicant or any of the other designated persons have been convicted of certain felonies at any time and other felonies in the previous 5 years. This bill would prohibit exemptions under these circumstances for foster care providers, as specified, in those homes where the individual has been convicted of murder or voluntary manslaughter.

(2) Existing law sets forth circumstances under which a minor may be adjudged a dependent child of the juvenile court, and establishes procedures to determine the temporary placement of a dependent child.

Existing law requires a county social worker to visit the home of a relative or prospective guardian who is not a licensed or certified foster parent, prior to placing the child in that home, to ascertain the appropriateness of the placement. Existing law also requires the court or county social worker to initiate a state and federal criminal records check through the California Law Enforcement Telecommunications System as part of their assessment. Existing law provides that these provisions shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

This bill would prohibit placement of the child in the home of a person if the criminal records check indicates the person has been convicted of a crime that the Director of Social Services cannot grant an exemption for with respect to foster family home and certified family home applicants.

This bill would also prohibit placement of a child in the home of a person who has been convicted of a crime that the Director of Social Services may grant an exemption for unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence, to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child.

This bill would repeal the provisions relating to the sunset and repeal of these existing law provisions.

To the extent this bill would impose additional duties on county welfare departments, this bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(4) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1522 of the Health and Safety Code is
2 amended to read:

3 1522. The Legislature recognizes the need to generate timely
4 and accurate positive fingerprint identification of applicants as a
5 condition of issuing licenses, permits, or certificates of approval
6 for persons to operate or provide direct care services in a
7 community care facility, foster family home, or a certified family
8 home of a licensed foster family agency. Therefore, the Legislature
9 supports the use of the fingerprint live-scan technology, as
10 identified in the long-range plan of the Department of Justice for
11 fully automating the processing of fingerprints and other data by
12 the year 1999, otherwise known as the California Crime
13 Information Intelligence System (CAL-CII), to be used for
14 applicant fingerprints. It is the intent of the Legislature in enacting
15 this section to require the fingerprints of those individuals whose
16 contact with community care clients may pose a risk to the clients'
17 health and safety. An individual shall be required to obtain either
18 a criminal record clearance or a criminal record exemption from
19 the State Department of Social Services before his or her initial
20 presence in a community care facility.

21 (a) (1) Before issuing a license or special permit to any person
22 or persons to operate or manage a community care facility, the
23 State Department of Social Services shall secure from an
24 appropriate law enforcement agency a criminal record to determine
25 whether the applicant or any other person specified in subdivision

26 (b) has ever been convicted of a crime other than a minor traffic

1 violation or arrested for any crime specified in Section 290 of the
2 Penal Code, for violating Section 245 or 273.5, of the Penal Code,
3 subdivision (b) of Section 273a of the Penal Code, or, prior to
4 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
5 or for any crime for which the department cannot grant an
6 exemption if the person was convicted and the person has not been
7 exonerated.

8 (2) The criminal history information shall include the full
9 criminal record, if any, of those persons, and subsequent arrest
10 information pursuant to Section 11105.2 of the Penal Code.

11 (3) Except during the 2003–04 ~~through~~ to the 2009–10 fiscal
12 years, inclusive, neither the Department of Justice nor the State
13 Department of Social Services may charge a fee for the
14 fingerprinting of an applicant for a license or special permit to
15 operate a facility providing nonmedical board, room, and care for
16 six or less children or for obtaining a criminal record of the
17 applicant pursuant to this section.

18 (4) The following shall apply to the criminal record information:

19 (A) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b), has
21 been convicted of a crime other than a minor traffic violation, the
22 application shall be denied, unless the director grants an exemption
23 pursuant to subdivision (g).

24 (B) If the State Department of Social Services finds that the
25 applicant, or any other person specified in subdivision (b) is
26 awaiting trial for a crime other than a minor traffic violation, the
27 State Department of Social Services may cease processing the
28 application until the conclusion of the trial.

29 (C) If no criminal record information has been recorded, the
30 Department of Justice shall provide the applicant and the State
31 Department of Social Services with a statement of that fact.

32 (D) If the State Department of Social Services finds after
33 licensure that the licensee, or any other person specified in
34 paragraph ~~(2)~~ (1) of subdivision (b), has been convicted of a crime
35 other than a minor traffic violation, the license may be revoked,
36 unless the director grants an exemption pursuant to subdivision
37 (g).

38 (E) An applicant and any other person specified in subdivision
39 (b) shall submit fingerprint images and related information to the
40 Department of Justice for the purpose of searching the criminal

1 records of the Federal Bureau of Investigation, in addition to the
2 criminal records search required by this subdivision. If an applicant
3 and all other persons described in subdivision (b) meet all of the
4 conditions for licensure, except receipt of the Federal Bureau of
5 Investigation's criminal offender record information search
6 response for the applicant or any of the persons described in
7 subdivision (b), the department may issue a license if the applicant
8 and each person described in subdivision (b) has signed and
9 submitted a statement that he or she has never been convicted of
10 a crime in the United States, other than a traffic infraction, as
11 defined in paragraph (1) of subdivision (a) of Section 42001 of
12 the Vehicle Code. If, after licensure, the department determines
13 that the licensee or any other person specified in subdivision (b)
14 has a criminal record, the license may be revoked pursuant to
15 Section 1550. The department may also suspend the license
16 pending an administrative hearing pursuant to Section 1550.5.

17 (F) The State Department of Social Services shall develop
18 procedures to provide the individual's state and federal criminal
19 history information with the written notification of his or her
20 exemption denial or revocation based on the criminal record.
21 Receipt of the criminal history information shall be optional on
22 the part of the individual, as set forth in the agency's procedures.
23 The procedure shall protect the confidentiality and privacy of the
24 individual's record, and the criminal history information shall not
25 be made available to the employer.

26 (G) Notwithstanding any other ~~provision of~~ law, the department
27 is authorized to provide an individual with a copy of his or her
28 state or federal level criminal offender record information search
29 response as provided to that department by the Department of
30 Justice if the department has denied a criminal background
31 clearance based on this information and the individual makes a
32 written request to the department for a copy specifying an address
33 to which it is to be sent. The state or federal level criminal offender
34 record information search response shall not be modified or altered
35 from its form or content as provided by the Department of Justice
36 and shall be provided to the address specified by the individual in
37 ~~their~~ *his or her* written request. The department shall retain a copy
38 of the individual's written request and the response and date
39 provided.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1):

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

1 (i) The criminal record of the person has been cleared as a
2 condition of licensure or certification by the person's governing
3 California medical care regulatory entity.

4 (ii) The person is providing time-limited specialized clinical
5 care or services.

6 (iii) The person is providing care or services within the person's
7 scope of practice.

8 (iv) The person is not a community care facility licensee or an
9 employee of the facility.

10 (B) A third-party repair person or similar retained contractor if
11 all of the following apply:

12 (i) The person is hired for a defined, time-limited job.

13 (ii) The person is not left alone with clients.

14 (iii) When clients are present in the room in which the
15 ~~repairperson~~ *repair person* or contractor is working, a staff person
16 who has a criminal record clearance or exemption is also present.

17 (C) Employees of a licensed home health agency and other
18 members of licensed hospice interdisciplinary teams who have a
19 contract with a client or resident of the facility and are in the
20 facility at the request of that client or resident's legal
21 decisionmaker. The exemption does not apply to a person who is
22 a community care facility licensee or an employee of the facility.

23 (D) Clergy and other spiritual caregivers who are performing
24 services in common areas of the community care facility or who
25 are advising an individual client at the request of, or with the
26 permission of, the client or legal decisionmaker, are exempt from
27 fingerprint and criminal background check requirements imposed
28 by community care licensing. This exemption does not apply to a
29 person who is a community care licensee or employee of the
30 facility.

31 (E) Members of fraternal, service, or similar organizations who
32 conduct group activities for clients if all of the following apply:

33 (i) Members are not left alone with clients.

34 (ii) Members do not transport clients off the facility premises.

35 (iii) The same organization does not conduct group activities
36 for clients more often than defined by the department's regulations.

37 (3) In addition to the exemptions in paragraph (2), the following
38 persons in foster family homes, certified family homes, and small
39 family homes are exempt from the requirements applicable under
40 paragraph (1):

1 (A) Adult friends and family of the licensed or certified foster
2 parent, who come into the home to visit for a length of time no
3 longer than defined by the department in regulations, provided
4 that the adult friends and family of the licensee are not left alone
5 with the foster children. However, the licensee, acting as a
6 reasonable and prudent parent, as defined in paragraph (2) of
7 subdivision (a) of Section 362.04 of the Welfare and Institutions
8 Code, may allow his or her adult friends and family to provide
9 short-term care to the foster child and act as an appropriate
10 occasional short-term babysitter for the child.

11 (B) Parents of a foster child's ~~friends~~ *friend* when the foster
12 child is visiting the friend's home and the friend, licensed or
13 certified foster parent, or both are also present. However, the
14 licensee, acting as a reasonable and prudent parent, may allow the
15 parent of the foster child's ~~friends~~ *friend* to act as an appropriate
16 short-term babysitter for the child without the friend being present.

17 (C) Individuals who are engaged by any licensed or certified
18 foster parent to provide short-term care to the child for periods not
19 to exceed 24 hours. Caregivers shall use a reasonable and prudent
20 parent standard in selecting appropriate individuals to act as
21 appropriate occasional short-term babysitters.

22 (4) In addition to the exemptions specified in paragraph (2), the
23 following persons in adult day care and adult day support centers
24 are exempt from the requirements applicable under paragraph (1):

25 (A) Unless contraindicated by the client's individualized
26 program plan (IPP) or needs and service plan, a spouse, significant
27 other, relative, or close friend of a client, or an attendant or a
28 facilitator for a client with a developmental disability if the
29 attendant or facilitator is not employed, retained, or contracted by
30 the licensee. This exemption applies only if the person is visiting
31 the client or providing direct care and supervision to the client.

32 (B) A volunteer if all of the following applies:

33 (i) The volunteer is supervised by the licensee or a facility
34 employee with a criminal record clearance or exemption.

35 (ii) The volunteer is never left alone with clients.

36 (iii) The volunteer does not provide any client assistance with
37 dressing, grooming, bathing, or personal hygiene other than
38 washing of hands.

39 (5) (A) In addition to the exemptions specified in paragraph
40 (2), the following persons in adult residential and social

1 rehabilitation facilities, unless contraindicated by the client's
2 individualized program plan (IPP) or needs and services plan, are
3 exempt from the requirements applicable under paragraph (1): a
4 spouse, significant other, relative, or close friend of a client, or an
5 attendant or a facilitator for a client with a developmental disability
6 if the attendant or facilitator is not employed, retained, or
7 contracted by the licensee. This exemption applies only if the
8 person is visiting the client or providing direct care and supervision
9 to that client.

10 (B) Nothing in this subdivision shall prevent a licensee from
11 requiring a criminal record clearance of any individual exempt
12 from the requirements of this section, provided that the individual
13 has client contact.

14 (6) Any person similar to those described in this subdivision,
15 as defined by the department in regulations.

16 (c) (1) Subsequent to initial licensure, ~~any a person specified~~
17 ~~in subdivision (b) and who is not exempted from fingerprinting~~
18 ~~shall, as a condition to employment, residence, or presence in a~~
19 ~~community care facility, be fingerprinted and sign a declaration~~
20 ~~under penalty obtain either a criminal record clearance or an~~
21 ~~exemption from disqualification pursuant to subdivision (g) from~~
22 ~~the State Department of Social Services prior to employment,~~
23 ~~residence, or initial presence in the facility. A person specified in~~
24 ~~subdivision (b) who is not exempt from fingerprinting shall be~~
25 ~~fingerprinted and shall sign a declaration under penalty of perjury~~
26 ~~regarding any prior criminal convictions. The licensee shall submit~~
27 ~~fingerprint images and related information to the Department of~~
28 ~~Justice and the Federal Bureau of Investigation, through the~~
29 ~~Department of Justice, for a state and federal level criminal~~
30 ~~offender record information search, or to comply with paragraph~~
31 ~~(1) of subdivision (h), prior to the person's employment, residence,~~
32 ~~or initial presence in the community care facility. These fingerprint~~
33 ~~images and related information shall be sent by electronic~~
34 ~~transmission in a manner approved by the State Department of~~
35 ~~Social Services and the Department of Justice for the purpose of~~
36 ~~obtaining a permanent set of fingerprints, and shall be submitted~~
37 ~~to the Department of Justice by the licensee. A licensee's failure~~
38 ~~to submit fingerprints to the Department of Justice prohibit the~~
39 ~~employment, residence, or initial presence of a person specified~~
40 ~~in subdivision (b) who is not exempt from fingerprinting and who~~

1 *has not received either a criminal record clearance or an*
2 *exemption from disqualification pursuant to subdivision (g) or to*
3 *comply with paragraph (1) of subdivision (h), as required in this*
4 *section, shall result in the citation of a deficiency and the immediate*
5 *assessment of civil penalties in the amount of one hundred dollars*
6 *(\$100) per violation per day for a maximum of five days, unless*
7 *the violation is a second or subsequent violation within a 12-month*
8 *period in which case the civil penalties shall be in the amount of*
9 *one hundred dollars (\$100) per violation for a maximum of 30*
10 *days, and shall be grounds for disciplining the licensee pursuant*
11 *to Section 1550. The department may assess civil penalties for*
12 *continued violations as permitted by Section 1548. The fingerprint*
13 *images and related information shall then be submitted to the*
14 *Department of Justice for processing. Upon request of the licensee,*
15 *who shall enclose a self-addressed stamped postcard for this*
16 *purpose, the Department of Justice shall verify receipt of the*
17 *fingerprints.*

18 (2) Within 14 calendar days of the receipt of the fingerprint
19 images, the Department of Justice shall notify the State Department
20 of Social Services of the criminal record information, as provided
21 for in subdivision (a). If no criminal record information has been
22 recorded, the Department of Justice shall provide the licensee and
23 the State Department of Social Services with a statement of that
24 fact within 14 calendar days of receipt of the fingerprint images.
25 Documentation of the individual's clearance or exemption *from*
26 *disqualification* shall be maintained by the licensee and be available
27 for inspection. If new fingerprint images are required for
28 processing, the Department of Justice shall, within 14 calendar
29 days from the date of receipt of the fingerprints, notify the licensee
30 that the fingerprints were illegible, the Department of Justice shall
31 notify the State Department of Social Services, as required by
32 Section 1522.04, and shall also notify the licensee by mail, within
33 14 days of electronic transmission of the fingerprints to the
34 Department of Justice, if the person has no criminal history
35 recorded. A violation of the regulations adopted pursuant to Section
36 1522.04 shall result in the citation of a deficiency and an immediate
37 assessment of civil penalties in the amount of one hundred dollars
38 (\$100) per violation per day for a maximum of five days, unless
39 the violation is a second or subsequent violation within a 12-month
40 period in which case the civil penalties shall be in the amount of

1 one hundred dollars (\$100) per violation for a maximum of 30
2 days, and shall be grounds for disciplining the licensee pursuant
3 to Section 1550. The department may assess civil penalties for
4 continued violations as permitted by Section 1548.

5 (3) Except for persons specified in ~~paragraph (2)~~ of subdivision
6 (b) *who are exempt from fingerprinting*, the licensee shall endeavor
7 to ascertain the previous employment history of persons required
8 to be fingerprinted ~~under this subdivision~~. If it is determined by
9 the State Department of Social Services, on the basis of the
10 fingerprint images and related information submitted to the
11 Department of Justice, that *subsequent to obtaining a criminal*
12 *record clearance or exemption from disqualification pursuant to*
13 *subdivision (g)*, the person has been convicted of, or is awaiting
14 trial for, a sex offense against a minor, or has been convicted for
15 an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of
16 the Penal Code, or a felony, the State Department of Social
17 Services shall notify the licensee to act immediately to terminate
18 the person's employment, remove the person from the community
19 care facility, or bar the person from entering the community care
20 facility. The State Department of Social Services may subsequently
21 grant an exemption *from disqualification* pursuant to subdivision
22 (g). If the conviction or arrest was for another crime, except a
23 minor traffic violation, the licensee shall, upon notification by the
24 State Department of Social Services, act immediately to either (A)
25 terminate the person's employment, remove the person from the
26 community care facility, or bar the person from entering the
27 community care facility; or (B) seek an exemption *from*
28 *disqualification* pursuant to subdivision (g). The State Department
29 of Social Services shall determine if the person shall be allowed
30 to remain in the facility until a decision on the exemption *from*
31 *disqualification* is rendered. A licensee's failure to comply with
32 the department's prohibition of employment, contact with clients,
33 or presence in the facility as required by this paragraph shall *result*
34 *in a citation of deficiency and an immediate assessment of civil*
35 *penalties in the amount of one hundred dollars (\$100) per violation*
36 *per day and shall* be grounds for disciplining the licensee pursuant
37 to Section 1550.

38 (4) The department may issue an exemption *from*
39 *disqualification* on its own motion pursuant to subdivision (g) if
40 the person's criminal history indicates that the person is of good

1 character based on the age, seriousness, and frequency of the
2 conviction or convictions. The department, in consultation with
3 interested parties, shall develop regulations to establish the criteria
4 to grant an exemption *from disqualification* pursuant to this
5 paragraph.

6 (5) Concurrently with notifying the licensee pursuant to
7 paragraph (3), the department shall notify the affected individual
8 of his or her right to seek an exemption *from disqualification*
9 pursuant to subdivision (g). The individual may seek an exemption
10 *from disqualification* only if the licensee terminates the person's
11 employment or removes the person from the facility after receiving
12 notice from the department pursuant to paragraph (3).

13 (d) (1) Before issuing a license, ~~special permit~~, or certificate
14 of approval to any person or persons to operate ~~or manage~~ a foster
15 family home or certified family home as described in Section 1506,
16 the State Department of Social Services or other approving
17 authority shall secure ~~from an appropriate law enforcement agency~~
18 ~~a criminal record~~ *California and Federal Bureau of Investigation*
19 *criminal history information* to determine whether the applicant
20 or any person specified in subdivision (b) *who is not exempt from*
21 *fingerprinting* has ever been convicted of a crime other than a
22 minor traffic violation or arrested for any crime specified in
23 subdivision (c) of Section 290 of the Penal Code, for violating
24 Section 245 or 273.5, subdivision (b) of Section 273a or, prior to
25 January 1, 1994, paragraph (2) of Section 273a of the Penal Code,
26 or for any crime for which the department cannot grant an
27 exemption if the person was convicted and the person has not been
28 exonerated. *The State Department of Social Services or other*
29 *approving authority shall not issue a license or certificate of*
30 *approval to any foster family home or certified family home*
31 *applicant who has not obtained both a California and Federal*
32 *Bureau of Investigation criminal record clearance or exemption*
33 *from disqualification pursuant to subdivision (g).*

34 (2) The criminal history information shall include the full
35 criminal record, if any, of those persons.

36 (3) Neither the Department of Justice nor the State Department
37 of Social Services may charge a fee for the fingerprinting of an
38 applicant for a license, special permit, or certificate of approval
39 described in this subdivision. The record, if any, shall be taken
40 into consideration when evaluating a prospective applicant.

1 (4) The following shall apply to the criminal record information:

2 (A) If the applicant or other persons specified in subdivision
3 (b) *who are not exempt from fingerprinting* have convictions that
4 would make the applicant's home unfit as a foster family home or
5 a certified family home, the license, special permit, or certificate
6 of approval shall be denied.

7 (B) If the State Department of Social Services finds that the
8 applicant, or any person specified in subdivision (b) *who is not*
9 *exempt from fingerprinting* is awaiting trial for a crime other than
10 a minor traffic violation, the State Department of Social Services
11 or other approving authority may cease processing the application
12 until the conclusion of the trial.

13 (C) For the purposes of this subdivision, a criminal record
14 clearance provided under Section 8712 of the Family Code may
15 be used by the department or other approving agency.

16 (D) To the *same* extent required ~~by~~ *for federal law funding*, an
17 applicant for a foster family home license or for certification as a
18 family home, and any other person specified in subdivision (b)
19 *who is not exempt from fingerprinting*, shall submit a set of
20 fingerprint images and related information to the Department of
21 Justice and the Federal Bureau of Investigation, through the
22 Department of Justice, for a state and federal level criminal
23 offender record information search, in addition to the criminal
24 records search required by subdivision (a).

25 (5) Any person specified in this subdivision shall, as a part of
26 the application, be fingerprinted and sign a declaration under
27 penalty of perjury regarding any prior criminal convictions or
28 arrests for any crime against a child, spousal or cohabitant abuse
29 or, any crime for which the department cannot grant an exemption
30 if the person was convicted and shall submit these fingerprints to
31 the licensing agency or other approving authority.

32 ~~(6) (A) The foster family agency shall obtain fingerprint images~~
33 ~~and related information from certified home applicants and from~~
34 ~~persons specified in subdivision (b) and shall submit them directly~~
35 ~~to the Department of Justice by electronic transmission in a manner~~
36 ~~approved by the State Department of Social Services and the~~
37 ~~Department of Justice. A foster family home licensee or foster~~

38 (6) (A) *Subsequent to initial licensure or certification, a person*
39 *specified in subdivision (b) who is not exempt from fingerprinting*
40 *shall obtain both a California and Federal Bureau of Investigation*

1 *criminal record clearance, or an exemption from disqualification*
2 *pursuant to subdivision (g), prior to employment, residence, or*
3 *initial presence in the foster family or certified family home. A*
4 *foster family home licensee or foster family agency shall submit*
5 *these fingerprint images and related information of persons*
6 *specified in subdivision (b) who are not exempt from fingerprinting*
7 *to the Department of Justice and the Federal Bureau of*
8 *Investigation, through the Department of Justice, for a state and*
9 *federal level criminal offender record information search, or to*
10 *comply with paragraph (1) of subdivision (b) prior to the person's*
11 *employment, residence, or initial presence in the foster family*
12 *home or certified family home. A (h). A foster family home*
13 *licensee's or a foster family agency's failure to submit fingerprint*
14 *images and related information to the Department of Justice, either*
15 *prohibit the employment, residence, or initial presence of a person*
16 *specified in subdivision (b) who is not exempt from fingerprinting*
17 *and who has not received either a criminal record clearance or*
18 *an exemption from disqualification pursuant to subdivision (g),*
19 *or comply with paragraph (1) of subdivision (h), as required in*
20 *this section, shall result in a citation of a deficiency, and the*
21 *immediate civil penalties of one hundred dollars (\$100) per*
22 *violation per day for a maximum of five days, unless the violation*
23 *is a second or subsequent violation within a 12-month period in*
24 *which case the civil penalties shall be in the amount of one hundred*
25 *dollars (\$100) per violation for a maximum of 30 days, and shall*
26 *be grounds for disciplining the licensee pursuant to Section 1550.*
27 *A violation of the regulation adopted pursuant to Section 1522.04*
28 *shall result in the citation of a deficiency and an immediate*
29 *assessment of civil penalties in the amount of one hundred dollars*
30 *(\$100) per violation per day for a maximum of five days, unless*
31 *the violation is a second or subsequent violation within a 12-month*
32 *period in which case the civil penalties shall be in the amount of*
33 *one hundred dollars (\$100) per violation for a maximum of 30*
34 *days, and shall be grounds for disciplining the foster family home*
35 *licensee or the foster family agency pursuant to Section 1550. A*
36 *licensee's failure to submit fingerprint images and related*
37 *information to the Department of Justice, or comply with paragraph*
38 *(1) of subdivision (h), as required in this section, may result in the*
39 *citation of a deficiency and immediate civil penalties of one*
40 *hundred dollars (\$100) per violation. A licensee's violation of*

1 ~~regulations adopted pursuant to Section 1522.04 may result in the~~
2 ~~citation of a deficiency and an immediate assessment of civil~~
3 ~~penalties in the amount of one hundred dollars (\$100) per violation.~~
4 The State Department of Social Services may assess penalties for
5 continued violations, as permitted by Section 1548. The fingerprint
6 images shall then be submitted to the Department of Justice for
7 processing.

8 (B) Upon request of the licensee, who shall enclose a
9 self-addressed envelope for this purpose, the Department of Justice
10 shall verify receipt of the fingerprints. Within five working days
11 of the receipt of the criminal record or information regarding
12 criminal convictions from the Department of Justice, the
13 department shall notify the applicant of any criminal arrests or
14 convictions. If no arrests or convictions are recorded, the
15 Department of Justice shall provide the foster family home licensee
16 or the foster family agency with a statement of that fact concurrent
17 with providing the information to the State Department of Social
18 Services.

19 (7) If the State Department of Social Services finds that the
20 applicant, or any other person specified in subdivision (b) *who is*
21 *not exempt from fingerprinting*, has been convicted of a crime
22 other than a minor traffic violation, the application shall be denied,
23 unless the director grants an exemption *from disqualification*
24 pursuant to subdivision (g).

25 (8) If the State Department of Social Services finds after
26 licensure or the granting of the certificate of approval that the
27 licensee, certified foster parent, or any other person specified in
28 ~~paragraph (2) of~~ subdivision (b) *who is not exempt from*
29 *fingerprinting*, has been convicted of a crime other than a minor
30 traffic violation, the license or certificate of approval may be
31 revoked by the department or the foster family agency, whichever
32 is applicable, unless the director grants an exemption *from*
33 *disqualification* pursuant to subdivision (g). A licensee's failure
34 to comply with the department's prohibition of employment,
35 contact with clients, or presence in the facility as required by
36 paragraph (3) of subdivision (c) shall be grounds for disciplining
37 the licensee pursuant to Section 1550.

38 (e) The State Department of Social Services ~~may~~ *shall* not use
39 a record of arrest to deny, revoke, or terminate any application,
40 license, employment, or residence unless the department

1 investigates the incident and secures evidence, whether or not
2 related to the incident of arrest, that is admissible in an
3 administrative hearing to establish conduct by the person that may
4 pose a risk to the health and safety of any person who is or may
5 become a client. The State Department of Social Services is
6 authorized to obtain any arrest or conviction records or reports
7 from any law enforcement agency as necessary to the performance
8 of its duties to inspect, license, and investigate community care
9 facilities and individuals associated with a community care facility.

10 (f) (1) For purposes of this section or any other provision of
11 this chapter, a conviction means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that
13 the State Department of Social Services is permitted to take
14 following the establishment of a conviction may be taken when
15 the time for appeal has elapsed, when the judgment of conviction
16 has been affirmed on appeal, or when an order granting probation
17 is made suspending the imposition of sentence, notwithstanding
18 a subsequent order pursuant to Sections 1203.4 and 1203.4a of the
19 Penal Code permitting the person to withdraw his or her plea of
20 guilty and to enter a plea of not guilty, or setting aside the verdict
21 of guilty, or dismissing the accusation, information, or indictment.
22 For purposes of this section or any other provision of this chapter,
23 the record of a conviction, or a copy thereof certified by the clerk
24 of the court or by a judge of the court in which the conviction
25 occurred, shall be conclusive evidence of the conviction. For
26 purposes of this section or any other provision of this chapter, the
27 arrest disposition report certified by the Department of Justice, or
28 documents admissible in a criminal action pursuant to Section
29 969b of the Penal Code, shall be prima facie evidence of the
30 conviction, notwithstanding any other ~~provision of law~~ prohibiting
31 the admission of these documents in a civil or administrative action.

32 (2) For purposes of this section or any other provision of this
33 chapter, the department shall consider criminal convictions from
34 another state or federal court as if the criminal offense was
35 committed in this state.

36 (g) (1) After review of the record, the director may grant an
37 exemption from disqualification for a license or special permit as
38 specified in ~~paragraphs (1) and~~ *paragraph* (4) of subdivision (a),
39 or for a license, special permit, or certificate of approval as
40 specified in paragraphs (4), (7), and ~~(5)~~ (8) of subdivision (d), or

for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this subdivision, an exemption ~~may~~ *shall* not be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (c) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code. *This clause shall not apply to foster care providers, including relative caregivers, nonrelated extended family members, or any other person specified in subdivision (b), in those homes where the individual has been convicted of an offense described in paragraph (1) of subdivision (c) of Section 667.5 of the Penal Code.*

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(C) Under no circumstances shall an exemption be granted pursuant to this subdivision to any foster care provider applicant if that applicant, or any other person specified in subdivision (b)

1 *in those homes, has a felony conviction for either of the following*
2 *offenses:*

3 *(i) A felony conviction for child abuse or neglect, spousal abuse,*
4 *crimes against a child, including child pornography, or for a crime*
5 *involving violence, including rape, sexual assault, or homicide,*
6 *but not including other physical assault and battery. For purposes*
7 *of this subparagraph, a crime involving violence means a violent*
8 *crime specified in clause (i) of subparagraph (A), or subparagraph*
9 *(B).*

10 *(ii) A felony conviction, within the last five years, for physical*
11 *assault, battery, or a drug- or alcohol-related offense.*

12 *(iii) This subparagraph shall not apply to licenses or approvals*
13 *wherein a caregiver was granted an exemption to a criminal*
14 *conviction described in clause (i) or (ii) prior to the enactment of*
15 *this subparagraph.*

16 *(iv) This subparagraph shall remain operative only to the extent*
17 *that compliance with its provisions is required by federal law as*
18 *a condition for receiving funding under Title IV-E of the federal*
19 *Social Security Act (42 U.S.C. Sec. 670 et seq.).*

20 (2) The department ~~may~~ shall not prohibit a person from being
21 employed or having contact with clients in a facility on the basis
22 of a denied criminal record exemption request or arrest information
23 unless the department complies with the requirements of Section
24 1558.

25 (h) (1) For purposes of compliance with this section, the
26 department may permit an individual to transfer a current criminal
27 record clearance, as defined in subdivision (a), from one facility
28 to another, as long as the criminal record clearance has been
29 processed through a state licensing district office, and is being
30 transferred to another facility licensed by a state licensing district
31 office. The request shall be in writing to the State Department of
32 Social Services, and shall include a copy of the person's driver's
33 license or valid identification card issued by the Department of
34 Motor Vehicles, or a valid photo identification issued by another
35 state or the United States government if the person is not a
36 California resident. Upon request of the licensee, who shall enclose
37 a self-addressed envelope for this purpose, the State Department
38 of Social Services shall verify whether the individual has a
39 clearance that can be transferred.

1 (2) The State Department of Social Services shall hold criminal
2 record clearances in its active files for a minimum of ~~two~~ *three*
3 years after an employee is no longer employed at a licensed facility
4 in order for the criminal record clearance to be transferred.

5 (3) The following shall apply to a criminal record clearance or
6 exemption from the department or a county office with
7 department-delegated licensing authority:

8 (A) A county office with department-delegated licensing
9 authority may accept a clearance or exemption from the
10 department.

11 (B) The department may accept a clearance or exemption from
12 any county office with department-delegated licensing authority.

13 (C) A county office with department-delegated licensing
14 authority may accept a clearance or exemption from any other
15 county office with department-delegated licensing authority.

16 (4) With respect to notifications issued by the Department of
17 Justice pursuant to Section 11105.2 of the Penal Code concerning
18 an individual whose criminal record clearance was originally
19 processed by the department or a county office with
20 department-delegated licensing authority, all of the following shall
21 apply:

22 (A) The Department of Justice shall process a request from the
23 department or a county office with department-delegated licensing
24 authority to receive the notice only if all of the following conditions
25 are met:

26 (i) The request shall be submitted to the Department of Justice
27 by the agency to be substituted to receive the notification.

28 (ii) The request shall be for the same applicant type as the type
29 for which the original clearance was obtained.

30 (iii) The request shall contain all prescribed data elements and
31 format protocols pursuant to a written agreement between the
32 department and the Department of Justice.

33 (B) (i) On or before January 7, 2005, the department shall notify
34 the Department of Justice of all county offices that have
35 department-delegated licensing authority.

36 (ii) The department shall notify the Department of Justice within
37 15 calendar days of the date on which a new county office receives
38 department-delegated licensing authority or a county's delegated
39 licensing authority is rescinded.

1 (C) The Department of Justice shall charge the department, a
2 county office with department-delegated licensing authority, or a
3 county child welfare agency with criminal record clearance and
4 exemption authority, a fee for each time a request to substitute the
5 recipient agency is received for purposes of this paragraph. This
6 fee shall not exceed the cost of providing the service.

7 (5) (A) A county child welfare agency with authority to secure
8 clearances pursuant to Section 16504.5 of the Welfare and
9 Institutions Code and to grant exemptions pursuant to Section
10 361.4 of the Welfare and Institutions Code may accept a clearance
11 or exemption from another county with criminal record and
12 exemption authority pursuant to these sections.

13 (B) With respect to notifications issued by the Department of
14 Justice pursuant to Section 11105.2 of the Penal Code concerning
15 an individual whose criminal record clearance was originally
16 processed by a county child welfare agency with criminal record
17 clearance and exemption authority, the Department of Justice shall
18 process a request from a county child welfare agency with criminal
19 record and exemption authority to receive the notice only if all of
20 the following conditions are met:

21 (i) The request shall be submitted to the Department of Justice
22 by the agency to be substituted to receive the notification.

23 (ii) The request shall be for the same applicant type as the type
24 for which the original clearance was obtained.

25 (iii) The request shall contain all prescribed data elements and
26 format protocols pursuant to a written agreement between the State
27 Department of Social Services and the Department of Justice.

28 (i) The full criminal record obtained for purposes of this section
29 may be used by the department or by a licensed adoption agency
30 as a clearance required for adoption purposes.

31 (j) If a licensee or facility is required by law to deny employment
32 or to terminate employment of any employee based on written
33 notification from the state department that the employee has a prior
34 criminal conviction or is determined unsuitable for employment
35 under Section 1558, the licensee or facility shall not incur civil
36 liability or unemployment insurance liability as a result of that
37 denial or termination.

38 (k) The State Department of Social Services may charge a fee
39 for the costs of processing electronic fingerprint images and related
40 information.

1 (l) Amendments to this section made in the 1999 portion of the
2 1999–2000 Regular Session shall be implemented commencing
3 60 days after the effective date of the act amending this section in
4 the 1999 portion of the 1999–2000 Regular Session, except that
5 those provisions for the submission of fingerprints for searching
6 the records of the Federal Bureau of Investigation shall be
7 implemented 90 days after the effective date of that act.

8 SEC. 2. Section 361.4 of the Welfare and Institutions Code is
9 amended to read:

10 361.4. (a) Prior to placing a child in the home of a relative, or
11 the home of any prospective guardian or other person who is not
12 a licensed or certified foster parent, the county social worker shall
13 visit the home to ascertain the appropriateness of the placement.

14 (b) Whenever a child may be placed in the home of a relative,
15 or the home of any prospective guardian or other person who is
16 not a licensed or certified foster parent, the court or county social
17 worker placing the child shall cause a state-level criminal records
18 check to be conducted by an appropriate government agency
19 through the California Law Enforcement Telecommunications
20 System (CLETS) pursuant to Section 16504.5. The criminal records
21 check shall be conducted with regard to all persons over 18 years
22 of age living in the home, and on any other person over 18 years
23 of age, other than professionals providing professional services to
24 the child, known to the placing entity who may have significant
25 contact with the child, including any person who has a familial or
26 intimate relationship with any person living in the home. A criminal
27 records check may be conducted pursuant to this section on any
28 person over 14 years of age living in the home who the county
29 social worker believes may have a criminal record. Within 10
30 calendar days following the criminal records check conducted
31 through the California Law Enforcement Telecommunications
32 System, the social worker shall ensure that a fingerprint clearance
33 check of the relative and any other person whose criminal record
34 was obtained pursuant to this subdivision is initiated through the
35 Department of Justice to ensure the accuracy of the criminal records
36 check conducted through the California Law Enforcement
37 Telecommunications System and shall review the results of any
38 criminal records check to assess the safety of the home. The
39 Department of Justice shall forward fingerprint requests for

1 federal-level criminal history information to the Federal Bureau
2 of Investigation pursuant to this section.

3 (c) Whenever a child may be placed in the home of a relative,
4 or a prospective guardian or other person who is not a licensed or
5 certified foster parent, the county social worker shall cause a check
6 of the Child Abuse Central Index pursuant to subdivision (a) of
7 Section 11170 of the Penal Code to be requested from the
8 Department of Justice. The Child Abuse Central Index check shall
9 be conducted on all persons over 18 years of age living in the
10 home. For any application received on or after January 1, 2008, if
11 any person in the household is 18 years of age or older and has
12 lived in another state in the preceding five years, the county social
13 worker shall check the other state's child abuse and neglect registry
14 to the extent required by federal law.

15 (d) (1) If the results of the California and federal criminal
16 records check indicates that the person has no criminal record, the
17 county social worker and court may consider the home of the
18 relative, prospective guardian, or other person who is not a licensed
19 or certified foster parent for placement of a child.

20 (2) If the criminal records check indicates that the person has
21 been convicted of a crime that the Director of Social Services
22 cannot grant an exemption for under Section 1522 of the Health
23 and Safety Code, the child ~~may~~ *shall* not be placed in the home.
24 If the criminal records check indicates that the person has been
25 convicted of a crime that the Director of Social Services may grant
26 an exemption for under Section 1522 of the Health and Safety
27 Code, the child ~~may~~ *shall* not be placed in the home unless a
28 criminal records exemption has been granted by the county, based
29 on substantial and convincing evidence to support a reasonable
30 belief that the person with the criminal conviction is of such good
31 character as to justify the placement and not present a risk of harm
32 to the child pursuant to paragraph (3).

33 (3) (A) A county may issue a criminal records exemption only
34 if that county has been granted permission by the Director of Social
35 Services to issue criminal records exemptions. The county may
36 file a request with the Director of Social Services seeking
37 permission for the county to establish a procedure to evaluate and
38 grant appropriate individual criminal records exemptions for
39 persons described in subdivision (b). The director shall grant or
40 deny the county's request within 14 days of receipt. The county

1 shall evaluate individual criminal records in accordance with the
2 standards and limitations set forth in paragraph (1) of subdivision
3 (g) of Section 1522 of the Health and Safety Code, and in no event
4 shall the county place a child in the home of a person who is
5 ineligible for an exemption under that provision.

6 (B) The department shall monitor county implementation of the
7 authority to grant an exemption under this paragraph to ensure that
8 the county evaluates individual criminal records and allows or
9 disallows placements according to the standards set forth in
10 paragraph (1) of subdivision (g) of Section 1522 of the Health and
11 Safety Code.

12 (4) The department shall conduct an evaluation of the
13 implementation of paragraph (3) through random sampling of
14 county exemption decisions.

15 (5) The State Department of Social Services shall not evaluate
16 or grant criminal records exemption requests for persons described
17 in subdivision (b), unless the exemption request is made by an
18 Indian tribe pursuant to subdivision (f).

19 (6) If a county has not requested, or has not been granted,
20 permission by the State Department of Social Services to establish
21 a procedure to evaluate and grant criminal records exemptions,
22 the county ~~may~~ *shall* not place a child into the home of a person
23 described in subdivision (b) if any person residing in the home has
24 been convicted of a crime other than a minor traffic violation,
25 except as provided in subdivision (f).

26 (e) Nothing in this section shall preclude a county from
27 conducting a criminal background check that the county is
28 otherwise authorized to conduct using fingerprints.

29 (f) Upon request from an Indian tribe, the State Department of
30 Social Services shall evaluate an exemption request, if needed, to
31 allow placement into an Indian home that the tribe has designated
32 for placement under the Indian Child Welfare Act (25 U.S.C. Sec.
33 1901 et seq.) that would otherwise be barred under this section.
34 However, if the county with jurisdiction over the child that is the
35 subject of the tribe's request has established an approved procedure
36 pursuant to paragraph (3) of subdivision (d), the tribe may request
37 that the county evaluate the exemption request. Once a tribe has
38 elected to have the exemption request reviewed by either the State
39 Department of Social Services or the county, the exemption
40 decision may only be made by that entity. Nothing in this

1 subdivision limits the duty of a county social worker to evaluate
2 the home for placement or to gather information needed to evaluate
3 an exemption request.

4 ~~(g) This section shall remain in effect only until January 1, 2010,~~
5 ~~and as of that date is repealed, unless a later enacted statute, that~~
6 ~~is enacted before January 1, 2010, deletes or extends that date.~~

7 SEC. 3. If the Commission on State Mandates determines that
8 this act contains costs mandated by the state, reimbursement to
9 local agencies and school districts for those costs shall be made
10 pursuant to Part 7 (commencing with Section 17500) of Division
11 4 of Title 2 of the Government Code.

12 SEC. 4. This act is an urgency statute necessary for the
13 immediate preservation of the public peace, health, or safety within
14 the meaning of Article IV of the Constitution and shall go into
15 immediate effect. The facts constituting the necessity are:

16 In order to secure necessary federal funding for the care of
17 children in California, it is necessary for this act to take effect
18 immediately.